



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

June 20, 2003

Mr. James L. Hall  
Assistant General Counsel  
Texas Department of Criminal Justice  
P.O. Box 4004  
Huntsville, Texas 77342-4004

OR2003-4259

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 183068.

The Texas Department of Criminal Justice (the "department") received a request for information relating to a deceased former inmate of the department. You claim that the requested information is excepted from disclosure under section 552.101 the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You contend that the information at issue is confidential pursuant to section 508.313 of the Government Code. In pertinent part, section 508.313 states:

(a) All information obtained and maintained, including a victim protest letter or other correspondence, a victim impact statement, a list of inmates eligible for release on parole, and an arrest record of an inmate, is confidential and privileged if the information relates to:

(1) an inmate of the institutional division subject to release on parole, release to mandatory supervision, or executive clemency;

(2) a releasee; or

(3) a person directly identified in any proposed plan of release for an inmate.

...

(c) The department may provide information that is confidential and privileged under Subsection (a) to:

(1) the governor;

(2) a member of the board;

(3) the Criminal Justice Policy Council in performing duties of the council under Section 413.021; or

(4) an eligible entity requesting information for a law enforcement, prosecutorial, correctional, clemency, or treatment purpose.

You state that the submitted information is held by the Parole Division of the department as information about a releasee.<sup>1</sup> The requestor is not authorized to obtain the information pursuant to section 508.313(c). Thus, based on your representations and our review of the submitted information, we agree that the information is generally confidential under section 508.313(a) of the Government Code.

As you acknowledge, however, the submitted information contains a medical record. Access to medical records is governed by the Medical Practice Act (the "MPA"), chapter 159 of the Occupations Code.<sup>2</sup> Section 159.002 of the MPA provides in pertinent part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

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<sup>1</sup>"Releasee" means a person released on parole or to mandatory supervision. Gov't Code § 508.001(9).

<sup>2</sup>Under the rules of statutory construction, a statute enacted later in time prevails over an earlier-enacted statute. See Gov't Code § 311.026, *Avery v. State*, 963 S.W.2d 550 (Tex.App.—Houston [1<sup>st</sup> Dist.] 1997, no pet.) (specific statute prevailed over general statute based on specific nature of statutory authority and fact that statute was originally enacted later in time than general statute). To the extent the access provisions of the MPA conflict with the confidentiality provision in section 508.313 of the Government Code in this case, the later-enacted provisions of the MPA prevail over section 508.313. See Act of August 5, 1981, 67<sup>th</sup> Leg., 1<sup>st</sup> C.S., ch. 1, § 1, 1981 Tex. Gen. Laws 1, 31 (enacting MPA), Act of June 21, 1947, 50<sup>th</sup> Leg., R.S., ch. 452, § 29, 1947 Tex. Gen. Laws 1049, 1057 (enacting statutory predecessor to Gov't Code § 508.313).

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

The medical record at issue here pertains to a patient who is deceased. Medical records pertaining to a deceased individual may be released only on the signed consent of the personal representative of the deceased. Occ. Code § 159.005(a)(5). The consent must specify (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Occ. Code §§ 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purpose for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Thus, the department may release the marked medical record only in accordance with the MPA. Open Records Decision No. 598 (1991).

In summary, the marked medical record may be released only in accordance with the MPA. The remainder of the submitted information is confidential under section 508.313 of the Government Code and must be withheld pursuant to section 552.101 of the Government Code. Based on this finding, we do not reach your other arguments against disclosure.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body

fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



David R. Saldivar  
Assistant Attorney General  
Open Records Division

DRS/sdk

Ref: ID# 183068

Enc: Submitted documents

c: Ms. Viajo Nelson  
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(w/o enclosures)